



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

June 11, 2020

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Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

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Part of
Public Record

Re: *New York State Department of Environmental Conservation – Adverse
Abandonment – Saratoga and North Creek Railway in Town of
Johnsburg, NY*
STB Docket No. AB 1261

Dear Ms. Brown:

On September 10, 2018, the New York State Department of Environmental Conservation (DEC or the Department) filed an application for authorization to abandon approximately thirty miles of railroad known as the Tahawus Line (the Line), located in Warren, Hamilton, and Essex Counties in New York's Adirondack Park. It is the Department's continued position that the public convenience and necessity favor abandonment of the Line.

After a series of abeyances, by letter dated July 12, 2019, the Department asked the Board to set a briefing schedule under which the Line's current owner, Saratoga and North Creek Railway, Inc. (SNCR) would have 30 days to file its opposition papers, if any. By order served on August 29, 2019, the Board granted the Department's request and set a briefing schedule. On September 30, 2019, the Department filed a timely request for a certificate of interim trail use. SNCR failed to oppose the Department's abandonment application by the September 30 deadline set forth in the Board's scheduling order. Instead, in an October 18, 2019 letter to the Board, SNCR agreed to proceed with the abandonment on a voluntary basis; "*irrevocably* represent[ed]" that it did not and would not oppose the Department's abandonment application; and affirmatively stated that "the public convenience and necessity favor abandonment" of the Line (emphasis added).

On March 17, 2020, the bankruptcy trustee for the estate of SNCR's parent company San Luis & Rio Grande Railroad, Inc. filed a voluntary chapter 11 bankruptcy petition on behalf of SNCR. On April 17, 2020, the trustee wrote to the Board conceding that the automatic stay "may not apply" to the Department's abandonment proceeding, but requesting that the proceeding nevertheless be held in abeyance so that he might "determine [whether] SNCR can be sold as an operating railway." By order served on May 19, 2020, the Board granted the trustee's request and stayed the abandonment proceeding until further notice.

While the Department did not oppose the trustee's request, it does not believe—for the reasons set forth in its initial application—that SNCR can be sold as a viable freight railroad. The Department takes particular issue, however, with SNCR's May 11, 2020 letter to the Board.¹ SNCR made no attempt to consult with DEC before filing the letter, and there is no truth to SNCR's representation that its October 2019 filing was "predicated" on a "reasonable" and "timely" proposal from the Department regarding interim trail use. In reality, because the Board has not yet issued a certificate of interim trail use, the time period in which DEC may attempt to negotiate a trail use agreement has not yet begun to run. Regardless, SNCR has affirmatively and *irrevocably* represented to the Board that it does not oppose the Department's application, and the Board should not countenance any attempt to rescind that representation. Nor should the Board credit SNCR's unsubstantiated claim—made in violation of its irrevocable statement of non-opposition—that "freight railroad operations [on the Line] now appear[] viable."

Respectfully submitted,

/s Joshua M. Tallent

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cc: service list

¹ To the extent 49 C.F.R. § 1104.13(a) is applicable here, the Department respectfully requests that the Board consider this reply to SNCR's May 11, 2020 letter even if submitted outside the twenty-day period set forth in that regulation.